

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 12-CR-077
Green Bay Division

FRANCIS G. GRADY,

Defendant.

PROPOSED JURY INSTRUCTIONS

The United States of America, by its attorneys, James L. Santelle, the United States Attorney for the Eastern District of Wisconsin, William J. Roach, Assistant United States Attorney for said district, respectfully submits the following proposed jury instructions.

Respectfully submitted this 5th day of July, 2012.

JAMES L. SANTELLE
United States Attorney

By: s/ William Roach

WILLIAM J. ROACH
Assistant United States Attorney

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

The Functions of the Court and the Jury

Members of the jury, you have seen and heard all the evidence and the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform the duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should not be influenced by any person's race, color, religion, national ancestry, or sex.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.01.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

The Evidence

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that [certain facts are true] [that a person would have given certain testimony].

[I have taken judicial notice of certain facts that may be regarded as matters of common knowledge. You may accept those facts as proved, but you are not required to do so.]

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.02.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Testimony of Witnesses (Deciding What to Believe)

You are to decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, you may consider, among other things:

- the witness's intelligence;
- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the manner of the witness while testifying; and
- the reasonableness of the witness's testimony in light of all the evidence in the case.

[You should judge the defendant's testimony in the same way that you judge the testimony of any other witness.]

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.03.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Weighing the Evidence–Inferences

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this “inference.” A jury is allowed to make reasonable inferences. Any inferences you make must be reasonable and must be based on the evidence in the case.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.04.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Definition of “Direct” and “Circumstantial” Evidence

Some of you have heard the phrases “circumstantial evidence” and “direct evidence.” Direct evidence is the testimony of someone who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a series of facts which tend to show whether the defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. You should decide how much weight to give to any evidence. All the evidence in the case, including the circumstantial evidence, should be considered by you in reaching your verdict.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.05.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

What is Not Evidence

Certain things are not evidence. I will list them for you:

First, testimony and exhibits that I struck from the record, or that I told you to disregard, are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections by the lawyers are not evidence. Attorneys have a duty to object when they believe a question is improper. You should not be influenced by any objection or by my ruling on it.

Fourth, the lawyers' statements to you are not evidence. The purpose of these statements is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.06.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Attorney Interviewing Witness

It is proper for an attorney to interview any witness in preparation of a trial.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.07.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

Number of Witnesses

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

Authority:

Seventh Cir. Pattern Jury Instructions, § 1.09.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

The Charge – The Indictment

The indictment in this case is the formal method of accusing a defendant of a crime and placing him or her on trial. It is not evidence against a defendant and does not create an inference of guilt.

You will be provided with copies of the indictment. You may refer to the indictment as you deliberate. Defendant, Francis G. Grady, has been charged in two counts. Count One charges Francis G. Grady with arson of a building used in interstate commerce, in violation of Title 18, United States Code, Sections 844(i).

Count two charges Francis G. Grady, with a FACE violation, freedom of access to clinic entrances, in violation of Title 18, United States Code, Section 248.

The defendant has pled not guilty to both of the charges.

Authority:

Seventh Cir. Pattern Jury Instructions, § 2.01 (modified).

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Presumption of Innocence – Burden of Proof

The defendant is presumed to be innocent of each of the charges. This presumption continues during every state of the trial and your deliberations on the verdict. It is not overcome unless from all the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty as charged. The government has the burden of proving the guilt of the defendant beyond a reasonable doubt.

This burden of proof stays with the government throughout the case. A defendant is never required to prove his innocence or to produce any evidence at all.

Authority:

Seventh Cir. Pattern Jury Instructions, § 2.03 .

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

Failure of Defendant to Testify

A defendant has an absolute right not to testify. The fact that a defendant did not testify should not be considered by you in any way in arriving at your verdict.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.01.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Weighing Expert Testimony

You have heard a witness [witnesses] give opinions about matters requiring special knowledge or skill. You should judge this testimony in the same way that you judge the testimony of any other witness. The fact that such a person has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness' qualifications, and all of the other evidence in the case.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.07.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

Prior Inconsistent Statements – Witnesses

You have heard evidence that before the trial certain witnesses made statements that may be inconsistent with those witnesses' testimony here in court. If you find that it is inconsistent, you may consider the earlier statement [only] in deciding the truthfulness and accuracy of that witness' testimony in this trial. [You may not use it as evidence of the truth of the matters contained in that prior statement.] [If that statement was made under oath, you may also consider it as evidence of the truth of the matters contained in that prior statement.]

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.09

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

Prior Inconsistent Statements – Defendant

A statement made by a defendant before trial that is inconsistent with the defendant's testimony here in court may be used by you as evidence of the truth of the matters contained in it, and also in deciding the truthfulness and accuracy of that defendant's testimony in this trial.

Authority:

Seventh Cir. Pattern Jury Instructions, § 3.10

COURT’S INSTRUCTION NO. _____

GOVERNMENT’S PROPOSED INSTRUCTION NO. _____

18 U.S.C. §844(i)

Arson of a Building – Elements

Count One of the indictment charges the defendant with arson of a building. To sustain the charge of Count One, the government must prove the following elements beyond a reasonable doubt:

First, that the defendant attempted to damage or did damage, by means of fire or explosive, the property identified in the indictment; that is, Planned Parenthood, located in Grand Chute, Wisconsin;

Second, that the defendant did so maliciously; and

Third, that at the time of the fire, Planned Parenthood was used in interstate commerce or in any activity affecting interstate commerce.

The term “maliciously” as used in this instruction means to act intentionally or with deliberate disregard of the likelihood that damage or injury will result.

The phrase “used in any activity affecting interstate commerce” means that the property was used for commercial purposes that affected interstate commerce. You may find an effect on interstate commerce if you find that the business purchased medical and office supplies from outside the State of Wisconsin.

Authority:

Eleventh Cir. Pattern Jury Instructions, Fourth Cir. Pattern Jury Instructions
Modern Federal Jury Instructions – Criminal P 30.01
United States v. Gullett, 75 F.3d 941 (4th Cir. 1996)

COURT’S INSTRUCTION NO. _____

GOVERNMENT’S PROPOSED INSTRUCTION NO. _____

18 U.S.C. § 248

Freedom of Access to Clinic Entrances (FACE) Violation - Elements

Count Two of the indictment charges the defendant with a FACE violation. To sustain the charge of Count Two, the government must prove the following elements beyond a reasonable doubt:

First, the defendant intentionally damaged the business identified in the indictment; and

Second, the defendant did so knowingly and because the facility was being used to provide reproductive health services.

A “facility” is a hospital, clinic, physician’s office, or other facility that provides reproductive-health services. It includes the building or structure in which the facility is located.

“Reproductive-health services” are medical, surgical, counseling, or referral services relating to the human reproductive system- including services relating to pregnancy or the termination of a pregnancy- provided in a hospital, clinic, physician’s office, or other facility.

Authority:

Eleventh Cir. Pattern Jury Instructions

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

Attempt - Definition

To “attempt” means that the defendant knowingly took a substantial step toward the commission of the offense with the intent to commit that offense.

Authority:

Seventh Cir. Pattern Jury Instructions.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Date of Crime Charged

The indictment charges that the offense was committed “on or about” a certain date. The government must prove that the offense happened reasonably close to that date but is not required to prove that the alleged offense happened on that exact date.

Authority:

Seventh Cir. Pattern Jury Instructions, § 4.04.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Separate Consideration of Charges

You should return a separate verdict as to each count. Your verdict of guilty or not guilty of an offense charged in one count should not control your decision as to that defendant under any other count.

Authority:

Seventh Cir. Pattern Jury Instructions, § 7.03. (modified)

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Punishment

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the court and should not be considered by you in any way in arriving at your verdict as to any count.

Authority:

Devitt & Blackmar, *Federal Jury Practice & Instructions*, § 18.02 (1977) (modified).

COUNT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Selection of Foreperson – Verdict

Upon retiring to the jury room, select one of your number as your foreperson. The foreperson will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

(Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in, date, and sign the appropriate form.)

OR

(Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your foreperson will fill in and date the appropriate form, and each of you will sign it.)

Authority:

Seventh Cir. Pattern Jury Instructions, § 7.01.

COURT'S INSTRUCTION NO. ____

GOVERNMENT'S PROPOSED INSTRUCTION NO. ____

Communication with Court

I do not anticipate that you will need to communicate with me. If you do, however, the only proper way is in writing, signed by the foreperson, or if he or she is unwilling to do so, by some other juror, and given to the marshal.

Authority:

Seventh Cir. Pattern Jury Instructions, § 7.05.

COURT'S INSTRUCTION NO. _____

GOVERNMENT'S PROPOSED INSTRUCTION NO. _____

Disagreement Among Jurors

The verdict must represent the considered judgment of each juror. Your verdict, whether it be guilty or not guilty, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to re-examine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of your fellow jurors or for the purpose of returning a unanimous verdict.

The twelve of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement which is consistent with the individual judgment of each juror.

You are impartial judges of the facts. Your sole interest is to determine whether the government has proved its case beyond a reasonable doubt.

Authority:

Seventh Cir. Pattern Jury Instructions, § 7.06.